

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CINDY MAHER and RON MAHER,

Plaintiffs,

vs.

CREIGHTON ST. JOSEPH REGIONAL
HEALTHCARE SYSTEM, L.L.C.,
ANDREW MYRTUE, M.D.; and UNITED
STATES OF AMERICA,

Defendants.

8:13CV9

MEMORANDUM AND ORDER

The United States has moved to strike the plaintiffs' jury demand on their claims for recovery under the Federal Tort Claims Act. (Filing No. [29](#)). The plaintiffs have not responded to the motion, and the deadline for responding has passed. The motion is fully submitted.

Parties are not entitled to a jury trial in most actions against the United States, (see [28 U.S.C. § 2402](#)), including actions pursued under the Federal Tort Claims Act. [U.S. v. Neustadt, 366 U.S. 696, 701 n. 10 \(1961\)](#) ("There is no right to a jury trial under the Tort Claims Act."). See also [Mader v. U.S., 654 F.3d 794, 797 n. 1 \(8th Cir. 2011\)](#) ("FTCA actions must be tried to a judge, not a jury"). The United States' motion to strike the plaintiff's jury demand on the FTCA claims will be granted.

Recognizing that at least part of the plaintiffs' claims will be tried to a jury, the United States further moves to prohibit the court from permitting that jury to render an advisory decision on the FTCA claims. Under Rule 39(c) of the Federal Rules of Civil Procedure: "In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury." [Fed. R. Civ. P. 39\(c\)](#). The court is permitted, in its discretion, to consider the determination of an advisory jury when

deciding claims against the United States. See, e.g., [Harris v. Secretary, U.S. Dept. of the Army](#), 119 F.3d 1313, 1320 (8th Cir 1997).

Accordingly,

IT IS ORDERED:

- 1) The United States' motion to strike the plaintiffs' jury demand on their claims for recovery under the Federal Tort Claims Act, (Filing No. [29](#)), is granted.
- 2) The court may, however, try the plaintiffs' FTCA claims with an advisory jury.

June 26, 2013.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge

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